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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/786,784

02/25/2004

Journey M. Ralbovsky

JOUR 36085US1

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07/12/2006

PEARNE & GORDON LLP
1801 EAST 9TH STREET
SUITE 1200
CLEVELAND, OH 44114-3108

EXAMINER

QIN, JIANCHUN

ART UNIT

PAPER NUMBER

2837

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/786,784	Applicant(s) RALBOVSKY, JOURNEY M.	
	Examiner Jianchun Qin	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-6, 8 and 9 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 is/are allowed.
- 6) ☒ Claim(s) 5 and 8 is/are rejected.
- 7) ☒ Claim(s) 4 and 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Little (6,034,308).

With respect to claim 5:

Little discloses a method of making a guitar comprising the step of providing an opening through the back of a guitar adjacent its upper edge for receiving the breast of a female player when the guitar is held in playing position (Fig. 4, and col. 4. lines 8-9).

Little does not mention expressly: forming an insert shaped to receive a female breast, and mounting said insert in said opening in position to receive the breast of player when the guitar is held in playing position.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to cut out a portion from the body of the Little's guitar and insert the portion back without making any change to the portion to form said opening, since it has been held that constructing a formally integral structure in various elements involves only routine skill in the art. *Nerwin V. Erlichman*, 168 USPQ 177, 179.

With respect to claim 8:

Little discloses, in a guitar having a back and a side surfaces, one of said side surfaces having upper and lower right hand bouts when the guitar is held in playing position (Fig. 1), the improvement comprising: a recess member shaped to receive the breast of a female player when the guitar held against the chest (Fig. 4, and col. 4. lines 8-9).

Little does not mention expressly: said recess member being inserted in said back surface adjacent the upper side surface between said upper right hand bout and said lower right hand bout.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to cut out a portion from the body of the Little's guitar and insert the portion back without making any change to the portion to form said recess member, since it has been held that constructing a formally integral structure in various elements involves only routine skill in the art. *Nerwin V. Erlichman*, 168 USPQ 177, 179.

Allowable Subject Matter

3. Claims 4 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. Claim 9 is allowed.

Reasons for Allowance

5. The following is a statement of reasons for the indication of allowable subject matter:

The primary reason for the allowance of claim 4 is the inclusion of the limitation that said recess member is cup-shaped to conform to a specific breast size of an intended user of said guitar. It is this limitation found in the claim, as it is claimed in the combination that has not been found, taught or suggested by the prior art of record, which makes this claim allowable over the prior art.

The primary reason for the allowance of claim 6 is the inclusion of the limitation that said step of forming said insert includes customizing said insert to the specific breast size of a female instrumentalist. It is this limitation found in the claim, as it is claimed in the combination that has not been found, taught or suggested by the prior art of record, which makes this claim allowable over the prior art.

The primary reason for the allowance of claim 9 is the inclusion of the limitation of a recess of a size and shape to receive the breast of a female player when the guitar held against the chest, said recess being a hole in said back surface adjacent the upper side surface when the guitar is held in playing position, said hole being located between said upper right hand bout and said lower right hand bout in position to receive the breast of a female player. It is these limitations found in the claim, as they are claimed in the combination that have not been found, taught or suggested by the prior art of record, which make this claim allowable over the prior art.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Response to Arguments

7. Applicant's arguments filed 05/08/2006 have been fully considered but they are not persuasive

With respect to claim 5 and 8, the recitation "an acoustic guitar" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Applicant argued that the Little reference does not disclose “providing an opening for receiving the breast of a player”. This argument is not persuasive. The Examiner’s position is that, giving the “opening” the broadest reasonable interpretation, Little does disclose, teach or suggest providing an opening for accommodating the player’s body (Fig. 4, and col. 4. lines 8-9), such as receiving the breast of a female player.

In response to Applicant’s arguments about the “insert”, it is the Examiner’s position that constructing a formally integral structure in various elements involves only routine skill in the art. Therefore, the limitations of forming an “insert” by cutting out a portion from the base body and putting the “insert” back to its original place without making any changes (for example, in size and shape) to the “insert” has not been given patentable weight.

The amended claims 4, 6 and 9 contain allowable subject, as indicated in section 5 above.


Contact Information

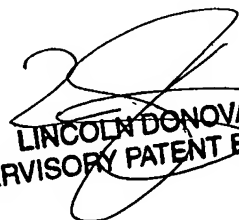
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jianchun Qin whose telephone number is (571) 272-5981. The examiner can normally be reached on 8:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jianchun Qin
Examiner
Art Unit 2837

JQ 
June 28, 2006


LINCOLN DONOVAN
SUPERVISORY PATENT EXAMINER